

ORDINANCE NO. 1611

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** revising and updating City of Des Moines development regulations relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; adding and codifying a new chapter entitled "Trees" to Title 16, amending chapters 14.20, 16.01, and 18.195 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations, repealing DMMC 18.195.130 and section 424 of Ordinance No. 1591, and finding that the revised development regulations meet the statutory requirements of RCW 36.70A.106.

**WHEREAS**, tree cutting, tree removal and tree retention are regulated pursuant to the Use and Maintenance of Public Rights-of-Way (chapter 12.05), Land Filling, Clearing and Grading Code (chapter 14.20 DMMC), Environmentally Critical Areas Code (chapter 16.10), Shoreline Master Program (chapter 16.20 DMMC), Layout and Design of Subdivisions and Similar Requirements (chapter 17.35), and Landscaping and Screening Requirements (chapter 18.195 DMMC), and

**WHEREAS**, there is no clear policy or development criteria in the DMMC regarding "best management practices" for the cutting of trees, and

**WHEREAS**, the City researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating the cutting of trees, and

**WHEREAS**, the City Council Environment Committee held three meetings to consider the matter and provided guidance on the development of Draft Ordinance No. 14-043, and

**WHEREAS**, the changes proposed by this Ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), a final determination of non-significance was issued by the SEPA responsible official, and published on April 28, 2014, in the *Seattle Times*, and the appropriate comment period expired on May 12, 2014, and the appeal period concluded on May 22, 2014, and

**WHEREAS**, a notice of intent to adopt the proposed code amendments was sent to the Washington State Department of

Commerce for a 15-day expedited review and comment period in accordance with State law, and

**WHEREAS**, notice of the public hearing was given to the public in accordance with the law, and

**WHEREAS**, a public hearing was held on the 22nd day of May, 2014, and the City Council sent the Draft Ordinance back to the Environment Committee for further review, and

**WHEREAS**, a City Council Environment Committee met on July 17, 2014 to review and discuss the substitute Draft Ordinance and directed staff to bring the substitute Draft Ordinance back to the full Council, and

**WHEREAS**, notice of the public hearing was given to the public in accordance with the law, and

**WHEREAS**, a public hearing was held on the 2nd day of October, 2014, and all persons wishing to be heard were heard, and

**WHEREAS**, the City Council finds that the amendments contained in this Ordinance are appropriate and necessary for the protection of sensitive, unique, fragile and valuable features of the City's environment and protecting the public health, safety and welfare against loss or damage from the indiscriminant cutting of trees in the City; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

A new chapter shall be added to Title 16 DMMC to read as follows in sections 1 through 12 of this Ordinance:

**Sec. 1. Title.** This chapter shall be entitled "Trees".

**Sec. 2. Application.** This chapter shall apply to the removal, cutting, and pruning of trees within the City of Des Moines.

**Sec. 3. Purpose.** These regulations are adopted to promote the public health, safety and general welfare of the citizens of Des Moines, including minimizing erosion, siltation and water pollution, surface water and ground water runoff, risks of landslides, and the need for additional storm drainage facilities; preserving trees for the reduction of noise, wind protection, slope stabilization, animal habitat, and reduction in air pollution; removing dead, diseased, or hazardous trees; implementing the City's comprehensive plan; providing for the delivery of reliable utility service; and reasonable development of property.

**Sec. 4. Authority.** This chapter is adopted pursuant to the authority set forth in chapters 36.70A, 36.70B and 36.70C RCW and other applicable laws.

**Sec. 5. Permit - Requirements.**

(1) No tree permit required. Except as otherwise provided in subsection (2) of this section, no tree permit is required to remove, cut, or prune trees on private developed, partially developed, or undeveloped lots as follows:

(a) Trees located outside of environmentally critical areas, shoreline areas, and associated buffer areas as verified by the City or qualified professional;

(b) Trees that are not part of a required landscaping area;

(c) The total area to be cleared is less than 2,000 square feet; and

(d) An exemption from a tree permit does not exempt a property owner from complying with policies, criteria and standards contained in this chapter or other applicable local, state or federal regulations or permit requirements.

(2) Tree permit required. Except as exempted in subsection (3) of this section, a tree permit is required to remove, cut, or prune trees as follows:



(a) Trees located within a critical area or shoreline area, or associated buffers.

(b) Trees located within a required landscaping area.

(c) Trees located on a private developed, partially developed, or undeveloped lot where the total area to be cleared is 2,000 square feet or greater.

(d) Trees located on City-owned property.

(e) Trees located on City right-of-way.

(3) Exemptions. The following situations are exempt from obtaining a tree permit that would otherwise be required under this section:

(a) Dead, diseased or hazard trees, as determined and/or verified by the City or as determined by a certified arborist, that are located outside of critical areas, shoreline areas and associated buffers.

(b) Emergency. A tree may be removed without first obtaining a tree permit in an emergency situation involving immediate danger to life or property provided the City is notified within seven days of the tree being cut, is provided such additional information as the City requests in order to verify the emergency, and an-after-the-fact tree permit is obtained within twenty days following the cutting of the tree, if required.

(c) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other laws or ordinances of the City.

(3) Other permits required. Other permits may be required as follows:

(a) Removing, cutting, or pruning of trees located within environmentally critical areas or the associated

buffer shall be reviewed in accordance with the environmentally critical areas regulations codified in chapter 16.10 DMMC.

(b) Removing, cutting, or pruning of trees located within shoreline environments or the associated buffer shall be reviewed in accordance with the shoreline master program codified in chapter 16.20 DMMC.

(c) Removing, cutting, or pruning of trees in a required landscaping area are subject to the Landscaping and Screening provisions codified in chapter 18.195 DMMC, and/or the requirements identified on the Final Plat.

(d) Removing, cutting, or pruning of trees located within the City right-of-way shall be reviewed in accordance the Use and Maintenance of Public Rights-of-Way provisions codified in chapter 12.05 DMMC.

(e) Removal, cutting, or pruning of trees that results in a total area of disturbance greater than 2,000 square feet shall be reviewed in accordance with the land clearing, grading, and filling provisions codified in chapter 14.20 DMMC.

**Sec. 6. Tree removal, cutting, and pruning limitations.** In addition to the Best Pruning Practices provisions codified in section 7 of this Ordinance, the following limitations shall apply to removing, cutting, and pruning of trees:

(1) Trees on private developed, partially developed, or undeveloped lots. No limitations other than a tree permit is required where the total area to be cleared is 2,000 square feet or greater.

(2) Trees on City-owned property.

(a) Removal of dead, diseased or hazard trees as determined and/or verified by the City or as determined by a certified arborist;

(b) Removal of small trees;

(c) Tree pruning that does not remove more than 25 percent of a tree's total leaf area;

(d) Removal of significant trees, provided that the removal of significant trees is subject to tree replacement ratio of 3:1.

(3) Trees on City right-of-way. Tree pruning does not remove more than 25 percent of a tree's total leaf area.

**Sec. 7. Best pruning practices.** Tree pruning shall conform to the International Society of Arboriculture standards, or other standards approved by the Department of Natural Resources (DNR) and/or the Department of Ecology (DOE), to maintain trees within environmentally critical areas and shoreline areas in a healthy and safe condition.

**Sec. 8. Tree replacement.**

(1) Replacement trees - Number. Any tree identified to be retained that is removed, destroyed or damaged shall be replaced by the applicant on the subject property at a ratio of 3:1:

(a) Replacement trees shall be a minimum size of eight feet in height for evergreen trees, and two inches in caliper for deciduous, and shall be approved by the Planning, Building and Public Works Department. The Planning, Building and Public Works Department may approve smaller trees if it determines they are of specimen quality.

(b) Trees shall be provided in addition to any street trees required under chapter 12.15 DMMC. The exact type and location of street trees shall be determined by the Planning, Building and Public Works Department.

(2) Maintenance of replacement trees. The applicant shall maintain all replacement trees in a healthy condition. The applicant shall be obligated to replant any replacement tree that dies, becomes diseased.

**Sec. 9. Tree permit - Application.** An application for a tree permit shall be submitted on a form provided by the City and shall include the following information:

(1) General information.

(a) The applicant shall give the name, address and telephone number of the applicant and owner of the property and the street address;

(b) The applicant must provide information on the proposed location, species, diameter and number of trees proposed to be cut or pruned; and

(c) The applicant must agree to pay all costs of cutting, pruning, removing debris, cleaning, and any traffic control needed.

(d) If the applicant is not the owner of the property, a notarized authorization by the property owner consenting to the tree cutting activity shall be provided.

(2) Plan sheet specifications. All plan sheets will contain the following information:

(a) The date, basis, and datum of the contours, which shall be referenced to the City's network of benchmarks, if applicable;

(b) Date, north arrow, and adequate scale (1:10, 1:20, or 1:40) on all maps and plans;

(c) Contours will be at two-foot contour intervals;

(d) Contact information for the applicant and the property owner, and legal description of the property;

(3) Temporary Erosion and Sedimentation Control Plan.

(a) Sequence for tree removal and other land-disturbing activities;



(b) Schedule for installation and removal of all temporary erosion and sediment control measures, including vegetative measures; and

(c) An outline of the methods to be used in clearing vegetation and disposing of the cleared vegetative matter.

(4) The applicant shall have an executed hold harmless and release agreement on a form approved by the City, indemnifying and releasing the City, its officials, officers, and agents from liability.

(5) Other information as deemed necessary by the code official.

**Sec. 10. Permit - Expiration - Extension.**

(1) Except when specific time limits are set by the City Manager or the City Manager's designee, any permit granted under this chapter shall expire one year from the date of issuance.

(2) The City Manager or the City Manager's designee may set specific limits to the project commencement and/or completion for any reasonable purpose, including but not limited to environmental reasons or for coordination with other permitted site work.

(3) Upon a showing of good cause, a permit may be extended for six months. Approved plans shall not be amended without authorization of the City Manager or the City Manager's designee.

**Sec. 11. Tree permit to be posted.** No work shall commence until a permit notice has been posted on the subject site at a conspicuous location. The notice shall remain posted until the project has been completed.

**Sec. 12. Fees.** There shall be a fee assessed to compensate the City for the expense of reviewing and processing plans, conducting inspections, providing for outside consulting services, and the like. The fee shall be set by written



administrative directive and shall be related to the amount of anticipated service for the particular application. Fees for permits authorized under this chapter that are reviewed after the proposed site work has started will be assessed at twice the normal rate, except for emergency exemption established in section 5 of this Ordinance.

**Sec. 13.** DMMC 16.01.050 and section (5) of Ordinance No. 1583 are amended to add the following definitions:

"Certified arborist" means an individual who has achieved a level of knowledge in the art and science of tree care through experience and by passing a comprehensive examination administered by the International Society of Arboriculture or urban forestry program.

"Developed or partially developed lot" means a lot or parcel of land upon which a usable structure is located.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, clearing, grading, paving, excavation, drilling operations or storage of equipment or materials located within the area of special flood hazard.

"Development activity" means any work, condition, or activity which requires a permit or approval under Titles 11, 12, 14, 16, 17 or 18 DMMC.

"Environmentally Critical Areas". See "Critical areas."

"Land clearing" means the act of removing, topping or destroying trees, topsoil, or ground cover from any undeveloped or partially developed lot, environmentally critical areas, shoreline environments, public lands, or public right-of-way.

"Significant trees" means healthy evergreen trees six inches (6") in diameter or greater as measured at fifty-four inches (54") above the ground, and healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches (8") in diameter or greater as measured at fifty-four inches (54") above the ground.

"Small trees" means evergreen trees that are less than six inches (6") in diameter as measured at fifty-four inches (54") above the ground and deciduous trees that are less than eight inches (8") in diameter as measured at fifty-four inches (54") above the ground.

"Tree" means a living woody plant characterized by one main stem or trunk and many branches, and having a diameter of four inches or more measured at 24 inches above ground level.

"Tree pruning" means to cut branches from a tree using practices approved by the International Society of Arboriculture to maintain a tree in a healthy and safe condition.

"Tree topping" means the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include but are not limited to "heading," "tipping," "hat-racking," and "rounding over."

"Undeveloped lot" means a lot or parcel of land upon which no usable structure exists.

"Vegetation" means the general plant life and the groundcover provided by plants, including trees.

**Sec. 14.** DMMC 14.20.030 and section 55 of Ordinance No. 1581 are amended to read as follows:

Purpose.

(1) These regulations are adopted for the following purposes:

(a) To promote the public health, safety, and general welfare of the citizens;

(b) To preserve and enhance the City's physical and aesthetic character by preventing indiscriminate removal or destruction of trees, soils, or ground cover within designated environmentally critical areas and shoreline areas;

(c) To promote land development practices that result in a minimal disturbance to the City's vegetation and soils;

(d) To minimize surface and subsurface water runoff volumes and to prevent erosion-sedimentation and reduce the risk of slides and other unstable conditions;

(e) To minimize the need for additional storm drainage facilities;

(f) To promote the retention of clusters of trees for the abatement of noise and wind protection as well as site stability maintenance;

(g) To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide;

(h) To promote building and site planning practices that are consistent with the City's natural topographical and vegetational features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, and the realization of a



reasonable enjoyment of property may require the removal of certain trees and ground cover;

(i) To ensure prompt development, restoration and replanting, and effective erosion and sedimentation control of property during and after land clearing, grading, or filling through the use of phase development, performance bonds, and other reasonable controls;

(j) To reduce degradation of streams and other water bodies located in and adjacent to the City via scouring, siltation, and water pollution;

(k) To implement the goals and objectives of the State Environmental Policy Act and the water quality standards set forth by the State Department of Ecology; and

(l) To implement and further the City's Comprehensive Plan.

(2) It is not the intent or purpose of this chapter to prevent the reasonable development of land in the City.

**Sec. 15.** DMMC 14.20.180 and section 70 of Ordinance No. 1581 are amended to read as follows:

**Exemptions.** Applicants must receive a written letter of exemption from the City Manager or the City Manager's designee before commencing with the exempted work. Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction.

(1) A grading or land clearing permit shall not be required for any of the following activities provided that the land clearing activity shall not

exceed 2,000 square feet; the grading and filling activity shall not exceed 50 cubic yards; and that the clearing, grading, and filling activity shall be subject to the minimum requirements specified in this chapter:

(a) The installation and maintenance of fire hydrants, water meters, and pumping stations, and street furniture by the City or its contractors;

(b) Removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards;

(c) Removal of trees or ground cover or dumping of fill on partially developed lots for the purpose of general property and utility maintenance, landscaping, or gardening; provided, that this exemption shall not apply to land clearing, grading, or filling for the purpose of developing the property with substantial permanent improvements such as roads, driveways, utilities, or buildings;

(d) Removal of dead or diseased ground cover or trees;

(e) A grading and filling activity does not obstruct a drainage course;

(f) Grading and filling activity to place a building foundation approved under a City building permit and involves less than 120 cubic yards of grading and filling;

(g) Cemetery graves;

(h) Refuse disposal sites controlled by other regulations;

(i) Exploratory excavations performed under the direction of a registered design professional. Exploratory excavation is not to begin construction of a building prior to receiving a permit (the sole purpose for preparing a soils report).

(2) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of the City.

**Sec. 16.** DMMC 18.195.020(4) and section (4) of section 413 of Ordinance No. 1591 are amended as follows:

(4) Plan requirements. The Planning, Building and Public Works Department shall review and may approve, approve with modifications, or disapprove site landscape development plans for all development activities subject to the provisions of this chapter. A landscaping plan shall be submitted to the Planning, Building and Public Works Department accurately drawn using an appropriate engineering or architectural scale which shows the following:

(a) Boundaries and dimensions of the site;

(b) Location and identification of all streets, alleys, sidewalks, and easements abutting the site, including dimensions;

(c) Proposed topography at a maximum of five-foot contours;



(d) Proposed location and dimensions of all on-site buildings including height of structures and distance between buildings;

(e) Details of any proposed architectural barriers;

(f) Dimensions and location of storage and trash areas, loading docks, exterior utility installations, and mechanical equipment;

(g) Layout and dimensions of all parking stalls, easements, access ways, turnaround areas, driveways, and sidewalks on-site;

(h) Percentage of landscaping for total site and net square footage of parcel;

(i) Proposed landscaping including location, species, and size at time of planting;

(j) Existing vegetation in general, and identifying all evergreen trees six inches in diameter or greater as measured at fifty-four inches (54") above the ground and all deciduous trees eight inches in diameter or greater as measured at fifty-four inches (54") above the ground;

(k) Irrigation plan, indicating the location of pipes, sprinkler heads and pumps, pipe size, head capacity, water pressure in pounds per square inch at the pump and sprinkler heads, and timer system.

**Sec. 17.** DMMC 18.195.110(1) and section (1) of section 422 of Ordinance No. 1591 are amended as follows:

(1) All existing healthy evergreen trees six inches DBH (diameter at breast height) or greater and all existing healthy deciduous trees (excluding alders, European ashes, cottonwoods and willows) eight inches in diameter or greater as

measured at fifty-four inches (54") above the ground, shall be retained to the extent feasible within landscape areas. The Planning, Building and Public Works Department shall designate trees to be retained prior to issuance of a land clearing, grading, and filling permit.

**Sec. 18.** DMMC 18.195.130 and section 424 of Ordinance No. 1591 are repealed.

**Sec. 19. Codification.** Sections 1 through 12 of this Ordinance shall be codified as a new chapter entitled "*Trees*" in Title 16 DMMC.

Sec. 20. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

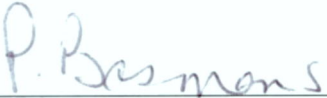
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**Sec. 21. Effective date.** This Ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

**PASSED BY** the City Council of the City of Des Moines this 13th day of November, 2014 and signed in authentication thereof this 13th day of November, 2014.

  
MAYOR

APPROVED AS TO FORM:

  
City Attorney

ATTEST:

  
City Clerk

Published: November 18, 2014

Effective Date: December 13, 2014



LEGAL NOTICE  
SUMMARY OF ADOPTED ORDINANCE  
CITY OF DES MOINES

ORDINANCE NO. 1611, Adopted November 13, 2014.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance revises and updates City of Des Moines development regulations relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; adds and codifies a new chapter entitled "Trees" to Title 16 DMMC, amends chapters 14.20, 16.01, and 18.195 DMMC to add new definitions and development regulations, repeals DMMC 18.195.130 and section 424 of Ordinance No. 1591, and finds that the revised development regulations meet the statutory requirements of RCW 36.70A.106.

The full text of the Ordinance will be mailed without cost upon request.

Bonnie Wilkins  
City Clerk

Published: November 18, 2014